

LCSCMAXT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

20 CR 330 (AJN)

6 GHISLAINE MAXWELL,

7 Defendant.

Jury Trial

8 -----x

9 New York, N.Y.
10 December 28, 2021
11 9:49 a.m.

12 Before:

13 HON. ALISON J. NATHAN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
18 Southern District of New York

19 BY: MAURENE COMEY

20 ALISON MOE

21 LARA POMERANTZ

22 ANDREW ROHRBACH

23 Assistant United States Attorneys

24 HADDON MORGAN AND FOREMAN

25 Attorneys for Defendant

BY: JEFFREY S. PAGLIUCA

LAURA A. MENNINGER

-and-

BOBBI C. STERNHEIM

-and-

COHEN & GRESSER

BY: CHRISTIAN R. EVERDELL

Also Present: Amanda Young, FBI

Paul Byrne, NYPD

Sunny Drescher,

Paralegal, U.S. Attorney's Office

Ann Lundberg,

Paralegal, Haddon Morgan and Foreman

LCSCMAXT

1 (Jury not present)

2 THE COURT: I received -- I think it was filed in the
3 wee hours, I didn't receive it until this morning, the
4 defense's followup letter taking a slightly different approach
5 to the jury's last note than what was argued in court.

6 I haven't heard from the government.

7 MS. MOE: I just noticed that the door to the jury
8 room is open.

9 THE COURT: Thank you. To be clear, the jury is not
10 there.

11 MS. MOE: Yes, your Honor. I meant the door to the
12 area that leads to the jury room. Just wanted to be cautious.

13 THE COURT: Thank you. Appreciate that.

14 MS. MOE: Thank you, your Honor. With respect to the
15 defendant's letter, this is essentially the same argument that
16 the defense advanced yesterday, which the Court carefully
17 considered and rejected. Nothing has changed between then and
18 now.

19 In particular, the defense's letter identifies no
20 error in the instruction the Court referred the jury to nor
21 could they. It was a correct legal instruction when the Court
22 instructed the jury last week, it was a correct legal
23 instruction when the Court referred the jury to it yesterday
24 afternoon, and that it remains true. It was a thorough and
25 carefully considered instruction on the legal elements and

LCSCMAXT

1 there can be no error in referring the jury to a correct legal
2 instruction. And so no relief is appropriate here.

3 At bottom, your Honor, the jury asked a question and
4 nothing more. There is no reason to speculate about what the
5 jury might be concluding. The jury has been accurately
6 instructed on the law and that's all that's required here.
7 Going beyond that to speculate about the jury's deliberations
8 and compound speculation upon speculation to send back
9 confusing legal instructions would compound the problem here.
10 The simple course is exactly the course the Court took
11 yesterday, which is to refer the jury to a thorough and
12 complete and accurate legal instruction. There can't be any
13 dispute that the instructions that the Court has given are
14 accurate, and that's all that's required here.

15 THE COURT: I suppose an additional point, just
16 looking at the -- I mean, the defense's new proposed
17 instruction talks about Count Two, which wasn't asked about.
18 Also, it has -- so it has three paragraphs. The first one is
19 about Count Two, which wasn't asked about. There is a second
20 paragraph. And then the third paragraph I think is just wrong,
21 an intent that Jane engaged in sexual activity in any state
22 other than New York cannot form the basis of these elements.
23 That would suggest it may have no relevance. This is the same
24 discussion we've had a couple of times, Mr. Everdell. Sexual
25 activity with respect to Jane in New Mexico under the age of 17

LCSCMAXT

1 can be relevant to an intent to transport to New York to engage
2 in sexual activity under the age of 17, I think. I think this
3 is the same basic discussion that we've had. So, in addition
4 to my reasoning yesterday, I think the proposal made by the
5 defense is wrong.

6 I continue to not know how to parse the jury's
7 question exactly, other than to know that they are asking about
8 Count Four, the defense's original suggestion to just point to
9 the motivating factor I rejected language or to say no. To say
10 no, I think, was the wrong course, because I don't understand
11 the question well enough to be able to say no.

12 Pointing to just the motivating factor language I
13 think was unhelpful because, really, the point is to remind
14 them of the whole instruction, including that it's a violation
15 of New York penal law that's charged and is the illegal sexual
16 activity that they're considering.

17 So, for those reasons, I am in the same place.

18 I did want to make a little bit of an additional
19 record regarding my extending the deliberations by an hour, the
20 instructions that I gave yesterday regarding that slightly
21 extended schedule.

22 I asked the jury to make themselves available to
23 deliberate until at least 6:00 today, which is a one-hour
24 extension of what's largely been our schedule. Although, it
25 was until 6 o'clock, I think, on the first night of

LCSCMAXT

1 deliberations.

2 I made clear that they can let me know through my
3 deputy if this presents a hardship for anyone. No one has so
4 indicated. I also made clear that they can take all the time
5 they need.

6 I extended the deliberations by an hour each day
7 because we are seeing an astronomical spike in the number
8 COVID-positive cases in New York City over the last one to two
9 weeks due to the omicron variant. We are, very simply, at a
10 different place regarding the pandemic than we were only one
11 week ago, and we now face a high and escalating risk that
12 jurors and/or trial participants may need to quarantine, thus
13 disrupting trial and putting at risk our ability to complete
14 this trial. Accordingly, extending deliberations by an hour
15 gives the jury more time each day to continue to engage in its
16 thoughtful deliberations.

17 We will take up later in the day how I will approach
18 the remainder of the week and going forward. I think the same
19 reasoning likely will lead me to talk to the jury at the end of
20 the day about continuing deliberations until a verdict is
21 reached.

22 I'll hear you on that now or later, as you like.

23 MR. EVERDELL: Your Honor, I don't need to be heard on
24 that issue now.

25 If I could, I understand the Court has overruled the

LCSCMAXT

1 request of the letter, but if I could make a brief record on
2 that, it will not take very long.

3 THE COURT: Okay. And so there is the record that you
4 made yesterday at the time the question came. There is the
5 record that you put in the letter this morning that came in
6 late -- early this morning that I reviewed this morning that we
7 just discussed. So, to the extent you're seeking a third bite
8 at the apple, go ahead.

9 MR. EVERDELL: I'm simply looking to fill out the
10 record. I understand it's been rejected by the Court.

11 I think from the defense point of view, I think two
12 things are very clear from this note. One is that the jury is
13 considering whether or not they can convict Ms. Maxwell on the
14 substantive offense in Count Four based solely on events that
15 took place in New Mexico and traveled to and from New Mexico.

16 THE COURT: There are a number of assumptions in that
17 that don't necessarily derive from the meaning of that letter,
18 but I understand that is your position.

19 MR. EVERDELL: Understood, your Honor.

20 And I think the second point is that they are looking
21 at the instructions that they have been given thus far because
22 they reference the second element of Count Four. So they're
23 looking at that instruction and they are unclear, they are
24 confused by those instructions. They are not sure whether or
25 not -- those instructions don't inform them that, in fact,

LCSCMAXT

1 conduct that occurs solely in New Mexico, travels to and from
2 New Mexico, solely in New Mexico cannot form the basis for a
3 violation of New York law --

4 THE COURT: Again, using your language, cannot form a
5 basis, would suggest it is irrelevant. I'll say that is wrong
6 as a legal matter, number 1. Number 2, you didn't seek to
7 exclude that testimony, nor did you seek a limiting instruction
8 with respect to that testimony, and I think that was quite ripe
9 for all of the reasons we've articulated.

10 MR. EVERDELL: Yes. Although, I would point out we
11 did, in the charging conference, request the inclusion of
12 travel from Florida to New York to make clear that that was the
13 required facts to be proven for those counts.

14 In any event, I think this is a time that calls for a
15 supplemental instruction. I understand the Court has
16 rejected --

17 THE COURT: I'm not going to give them an incorrect
18 supplemental instruction.

19 MR. EVERDELL: If the Court thinks the instruction
20 that was proposed is incorrect, we can certainly work to draft
21 a correct one. I think the jury is saying that they may
22 convict Ms. Maxwell on Count Four based on conduct that solely
23 relates to New Mexico. I am not saying it is irrelevant. What
24 I am saying is if all they had -- which is what I think the note
25 is saying -- is travel to and from New Mexico and alleged sexual

LCSCMAXT

1 activity that occurred in New Mexico, that wouldn't be a
2 sufficient basis to convict on Count Four or Count Two because
3 it requires an intent to violate New York law, and you can't
4 violate this section of New York law in New Mexico.

5 So if that's all they're considered on a basis to
6 convict on Count Four and Count Two, then that would be
7 insufficient and improper, and that's why I think a
8 supplemental instruction that clarifies that point is warranted
9 in this case, but I understand the Court has rejected that.
10 And that's all.

11 THE COURT: I think the instruction is correct that I
12 referred them to. The reading of the note that you've
13 suggested, I have no idea if that's what the jury is asking or
14 many other plausible readings, and what you've proposed, as you
15 just indicated, would be incorrect. So, I think that's why
16 precisely we sent them back to the charge.

17 Anything else?

18 MR. EVERDELL: No, your Honor.

19 THE COURT: As I said, we'll see where we are at the
20 end of the day, but in light of the variant, my concern about
21 interruption of trial, given the increasing daily risk of
22 exposure to either a juror or trial participant requiring
23 quarantine, it is time to think to have the jurors make plans
24 to continue deliberating until a verdict is reached.

25 I will wait until we hear from the jury, otherwise

LCSCMAXT

1 I'll bring you back in to discuss that. Thank you.

2 (Recess)

3 (Continued on next page)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

LCSCMAXT

AFTERNOON SESSION

4:46 p.m.

THE COURT: I received a note. Our deliberations are moving along and we are making progress. We are at a good point and would like to end today at 5:00 p.m. and continue tomorrow morning at 9:00 a.m.

I don't know if anybody wants to say anything. I have a view.

MR. PAGLIUCA: I think since they requested to leave, they should be allowed to leave, your Honor. Thank you.

MS. MOE: Your Honor, the government defers to the Court for the schedule today.

THE COURT: I take it to mean they won't be done in an hour and so they're going to break for the night anyway. I will bring them out and send them home at 5:00 as they requested.

I intend to do the following, though, I'll hear from you, but as I noted this morning, in light of where we now find ourselves, given the omicron variant, I must require deliberations every day going forward until they reach a verdict. I will instruct them that we will continue deliberations each day on the same schedule until they reach a verdict, so they should make themselves available for the remainder of the week and, if necessary, for the weekend. I'll tell them as I did yesterday regarding extending deliberations

LCSCMAXT

1 until 6:00, but if this schedule presents a substantial
2 hardship for anyone, they'll let my deputy know.

3 As I said this morning, I conclude this is necessary
4 because we are seeing an astronomical spike in the number of
5 COVID-positive cases in New York City due to the highly
6 contagious omicron variant. We are, very simply, at a vastly
7 different place regarding the pandemic than we were only a week
8 ago. We now face a high and daily escalating risk that jurors
9 and/or necessary trial participants would need to quarantine,
10 thus disrupting trial and putting at risk our ability to
11 complete this trial. Put simply, I conclude that proceeding
12 this way is the best chance to both give the jury as much time
13 as they need and to avoid a mistrial as a result of the omicron
14 variant.

15 So that is what I intend to do, and I'll tell you
16 precisely what I intend to say. I'll hear from you.

17 MR. PAGLIUCA: Your Honor, our only issue would be
18 telling them to deliberate through the weekend and New Year's.
19 I don't think it's unreasonable to have them deliberate through
20 the remainder of the week, but given the fact that the Court
21 told them initially that they would have those days off, I
22 don't think we should go back on that commitment entirely. I
23 do think that it is appropriate that they deliberate through
24 the workweek and then have the weekend off if they so choose.

25 That's my position, your Honor.

LCSCMAXT

1 THE COURT: I am -- yes, go ahead, Ms. Moe.

2 MS. MOE: We're just going to add that the government
3 agrees that the Court has the discretion to set a schedule for
4 deliberations. Absent a hardship, I think the schedule the
5 Court has proposed is entirely reasonable under the
6 circumstances.

7 THE COURT: Here's what I'll do. I'll do what I just
8 indicated today for through the week, and if we don't have a
9 verdict tomorrow, I'll say through the weekend.

10 MR. PAGLIUCA: That makes sense to me, your Honor.

11 THE COURT: In each case, I am couching it with, they
12 have the option to indicate if it's a hardship due to
13 unmoveable commitments.

14 MR. PAGLIUCA: That's a good suggestion, your Honor.
15 That's fine with us.

16 THE COURT: Ms. Moe.

17 MS. MOE: Yes, your Honor. Thank you.

18 THE COURT: Let me tell you exactly what I plan to say
19 so you can tell me if you wish anything different.

20 First, I'll just go over the schedule and COVID
21 protocols, which the district executive has asked me to remind,
22 in light of the variant. And I'll continue to urge caution as
23 I have been. And then I'll say, as to schedule going forward,
24 we are going to continue with the same daily schedule as today,
25 that is to say 9:00 a.m. to at least 6:00 p.m. Please let me

LCSCMAXT

1 know by note if you agree to stay longer. However, I am going
2 to ask that deliberations continue going forward on this
3 schedule every day this week until a verdict is reached. So
4 please make yourselves available, should it be necessary, to
5 sit for deliberations for the remainder of this week. If this
6 presents a substantial hardship for anyone because of
7 unmoveable commitments, please let Ms. Williams know. Of
8 course, by this, I don't mean to pressure you in any way. You
9 should take all the time that you need.

10 MR. PAGLIUCA: That's fine, your Honor. Thank you.

11 MS. MOE: Yes, your Honor. Thank you.

12 THE COURT: I'll ask Ms. Williams to bring them out.

13 (Continued on next page)
14
15
16
17
18
19
20
21
22
23
24
25

LCSCMAXT

1 (Jury present)

2 THE COURT: Members of the jury, I did receive your
3 note indicating that you would like to end today at 5:00 p.m.
4 and continue tomorrow at 9:00 a.m. I will send you home at the
5 time you've requested. We'll start again tomorrow at 9:00 a.m.

6 Of course, all rules continue to apply. Please
7 continue to take all precautions regarding the highly
8 contagious omicron variant. We need each of you here and
9 healthy. So please, wear high quality masks and take all
10 available precautions. As I've indicated before, we have masks
11 for you. If anyone wishes to have transportation provided that
12 hasn't taken us up on that offer, please let Ms. Williams know.

13 Relatedly, the main courthouse administrator has asked
14 me to remind you of the COVID protocols. You must remain
15 masked in KN95 or N95 masks at all times, except when briefly
16 eating or drinking. You must maintain distance in the jury
17 room during deliberations as indicated in the seat placements
18 and markings. If you do break briefly for lunch, please use
19 the additional seating to gain even further distancing while
20 your masks are briefly off.

21 As to the schedule going forward, we are going to
22 continue with the same schedule as of today, if needed, 9:00
23 a.m. to at least 6:00 p.m. Please let me know by note if you
24 agree to stay longer any day.

25 However, I am going to ask that deliberations continue

LCSCMAXT

1 going forward on this schedule every day this week until a
2 verdict is reached. So please make yourselves available,
3 should it be necessary, to sit for deliberations for the
4 remainder of the week. If this presents a substantial hardship
5 for anyone because of unmoveable commitments, please let
6 Ms. Williams know. Of course, by this I don't mean to pressure
7 you in any way. You should take all the time that you need.

8 Have a good night. Stay safe and healthy. We'll see
9 you tomorrow.

10 (Continued on next page)

LCSCMAXT

1 (Jury not present)

2 THE COURT: Matters to take up, counsel?

3 MS. MOE: No, your Honor.

4 MS. STERNHEIM: No, your Honor.

5 THE COURT: See everyone tomorrow. Please be safe.

6 (Adjourned to December 29, 2021 at 9:00 a.m.)

7 * * *